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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Gruhl

Serial No.: 09/757,046

Filed: January 8, 2001

For: **COMPUTATIONALLY EFFICIENT, PLATFORM-
INDEPENDENT DATA TRANSFER PROTOCOL**

Art Unit: 2151

Examiner: Phillips

ARC9-2000-0128-US1

April 7, 2004
750 B STREET, Suite 3120
San Diego, CA 92101**RESPONSE TO OFFICE ACTION**Commissioner of Patents and Trademarks
Washington, DC 20231

Dear Sir:

The following remarks are submitted in response to the Office Action dated March 25, 2004, rejecting all claims as being anticipated by Mishra. All independent claims require a data tree explicitly or in terms of leaves and nodes for generating a message, whereas nothing in Mishra resembles a data tree, nor is one ever disclosed or even suggested in Mishra. In fact, the well-known terms of art "tree", "leaf", and "node" nowhere appear in Mishra.

Nevertheless, the examiner has read the element 42 of Mishra as the claimed "node", the element 43 as the claimed "leaf", and the element 54 as the recited node size in Claim 1. In reality, the element 42 is an ID code for an operation, the element 43 is a parameter, and the element 54 is a count of parameter arguments that evidently applies to the entire message, not just any one portion.

1053-111.AMD

CASE NO.: ARC9-2000-0128-US1
Serial No.: 09/757,046
April 7, 2004
Page 2

PATENT
Filed: January 8, 2001

The rejection cannot stand. Claims must be construed as one skilled in the art would interpret them. MPEP §2111.01, and there has been no evidence adduced of record that anyone other than an examiner bent on denying patentability would consider an ID code as a "node", much less a related parameter as a "leaf" of the "node". There is no node/leaf relationship shown in Mishra under the broadest claim interpretation that is legally permitted, that is, as one skilled in the art would regard them. The rejections fail to establish a case of unpatentability.

Moreover, note that setting aside the impropriety noted above, even if the element 43 were considered to be a "leaf", the element 54 does not indicate the size of the "leaf" but of all the parameter arguments being made, so even under the illegitimate interpretation in the rejection, Claim 1 would not be arrived at.

With particular respect to Claim 4, the allegation that the element 46 indicates a "node size" (that would be, in the examiner's world, the size of the operation ID 42) is incorrect, even under the examiner's interpretation. The element 46 of Mishra is a unit count associated with a name, but not the size of the name itself.

The rejection of Claim 5 (that Mishra contains only nodes and leaves) is deficient for the reason that Mishra does not ever mention nodes or leaves or show anything that the skilled artisan would regard as being equivalent, based on the paucity of evidence of record.

Regarding the inherency allegations relative to claims 6 and 7, Applicant notes that to be inherent, a system or device must *necessarily* have the allegedly inherent element, MPEP §2112. There are many ways to communicate over the Internet, not just with RPCs as set forth in Claim 6, so such cannot be inherent in Mishra since it is not *necessarily* the case the Mishra uses them. The allegation that Mishra *necessarily*

1053-111.AMD

CASE NO.: ARC9-2000-0128-US1
Serial No.: 09/757,046
April 7, 2004
Page 3

PATENT
Filed: January 8, 2001

requires a depth-first traversal of a tree as recited in Claim 7, when Mishra has no tree structure to begin with, is difficult to understand.

The Examiner is cordially invited to telephone the undersigned at (619) 338-8075 for any reason which would advance the instant application to allowance.

Respectfully submitted,



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JLR:jg

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